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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,454	07/13/2004	Robert M. Schmidt	04923 (LC 0159 PUS)	4453

36014 7590 05/02/2006
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EXAMINER

SCHRODE, WILLIAM THOMAS

ART UNIT PAPER NUMBER

3676

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/710,454	Applicant(s) SCHMIDT ET AL.	
	Examiner William Schrode	Art Unit 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-7,9-11,13-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) 4,8,12 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,9-11,13-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/13/04 & 1/23/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 1, 2, 3, 9, 12, 13, 16, 17 and 18 generic to the following disclosed patentably distinct species: Species I (Fig. 1-3 and 6), species II (Fig. 1-3 and 7), species III (Fig. 1, 4-6), species IV (Fig. 1, 4-5 and 7). The species are independent or distinct because each species has a distinct operation controlled by different mechanisms. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

During a telephone conversation with Vincent Ilagan on 4/11/2006 a provisional election was made without traverse to prosecute the invention of species II (Fig. 1, 2-3 and 7), claims 1-3, 5-7, 9-11, 13-15 and 17-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-7, 11, 15 and 20 are

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the viscous fluid must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: The specification refers to a viscous dampening mechanism but in the figures the dampening mechanism appears to be a gear dampening mechanism. One skilled in the art would not consider a gear to be considered a viscous fluid.

Appropriate correction is required.

Claim Objections

Claims 19 and 20 are objected to because of the following informalities: In regard to claims 19 and 20, the preambles are consistent with the parent claim 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 10, 15, 18, 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claims 7, 15 and 20, the claims are unclear because the applicant's drive mechanism is not a cam mechanism rather the drive mechanism is a gear mechanism including a cam. For examining purposes

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the examiner will examine the claims to mean a cam is included in the drive mechanism, until further corrections are made.

In regard to claims 10 and 18, the applicant claims that the drive mechanism is coupled to the switch device. The examiner is unclear how the drive mechanism is coupled to the switch because the elements do not make a pair. For examining purposes the examiner will examine the claims as "best understood" to mean engaging, until further notification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-7, 9- 11, 13-15 and 17-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Meinke (6,264,257) in view of Geil et al. (6,181,024). In regard to claims 1, 10 and 18, as "best understood" Meinke teaches a mechanical handle assembly comprising a door handle (42) mechanism coupled to the door for actuation by a user, said door handle mechanism being moveable for unlatching the door; a drive train mechanism (46 and 64) coupled to said door handle mechanism; and a damping mechanism (68) coupled to one of said door handle and said drive train mechanism for slowing movement of one of said door handle and said drive train mechanism..

Meinke fails to teach a controller; the door handle actuating a vehicle-based system; a switch device operatively coupled to said drive train mechanism and being

selectively closed by said drive train mechanism; a vehicle-based transceiver coupled to said controller; a portable transponder carried by a user and utilized for communicating with said vehicle based transponder; a switch device coupled to one of said controller and said vehicle-based transceiver, said switch device for actuating said vehicle-based transceiver to transmit a challenge signal to said portable transponder; said door handle being movable within a predetermined distance including a switch-triggering distance and an unlatching distance that is greater than and inclusive of said switch-triggering distance, said switch-triggering distance for triggering said switch device and actuating said controller for determining whether said user is authorized to enter the vehicle, said unlatching distance for providing access to the vehicle; a locking mechanism coupled to and actuated by said controller, said locking mechanism for unlocking said door when said controller determines that said user is an authorized entity and before said door handle has moved by said unlatching distance.

Geil shows it is known in the art to construct a handle actuated by a user to actuate a switch (2) and a vehicle-based system (3-6).

It would have been obvious to one with ordinary skill in the art at the time of the invention to modify Meinke's handle assembly and construct the handle to actuate a switch and a vehicle-based system as taught by Geil, since such a modification would increase the security of the door and allow a user to remotely unlock a car door.

In regard to claim 2, Meinke in view of Geil, Geil teaches the mechanical door handle assembly wherein said door handle is movable within a predetermined travel distance, said door handle actuating said drive train mechanism and closing said switch

device when said door handle is moved a substantially small portion of said predetermined travel distance.

In regard to claims 3 and 19, Meinke in view of Geil, Geil teaches the mechanical door handle assembly wherein said door handle is movable within a predetermined travel distance, said predetermined travel distance including a switch-triggering distance (A-C) and an unlatching distance that is greater than and inclusive of said switch-triggering distance (B-A), said door handle being moved by said switch-triggering distance for actuating said switch device, said door handle being moved by said unlatching distance for unlatching the door.

In regard to claims 5 and 13, Meinke in view of Geil, Meinke teaches the mechanical door handle assembly wherein said door handle mechanism has a lift configuration for unlatching the door.

In regard to claims 6 and 14, Meinke in view of Geil, Meinke teaches the mechanical door handle assembly wherein said drive mechanism is a gear mechanism (i.e. 46 and 64 mesh together to create a drive motion).

In regard to claims 7 and 15, Meinke in view of Geil, Meinke as “best understood” teaches the mechanical door handle assembly wherein said drive mechanism includes a cam mechanism (i.e. 64 is a cam).

In regard to claims 9 and 17, Meinke in view of Geil, Geil teaches the mechanical door handle assembly wherein said switch device is biased to an open position.

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In regard to claim 11, Meinke in view of Geil, Geil teaches the mechanical door handle assembly wherein said switch-triggering distance is substantially less than said unlatching distance.

In regard to claim 20, Meinke in view of Geil, as "best understood" Geil teaches the mechanical door handle assembly wherein said drive mechanism is at least one of a gear mechanism, a cam mechanism, and a lever mechanism.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 3, 9-11, and 18-20 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 9, 12, 13, 16-18 of copending Application No. 10/710444. Although the conflicting

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claims are not identical, they are not patentably distinct from each other because they both disclose a mechanical door handle actuation unit triggering a switch and a vehicle-based system.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meinke, Geil et al, Spurr et al, Muramatsu et al, Stoecker, Cetnar et al, Villbrandt et al, Wittwer, P. Gandert et al, Weyerstall et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Schrode whose telephone number is (571)272-1647. The examiner can normally be reached on Mon-Fri 9AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571)272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WS
4/28/2006


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